

8 March 1991

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT  
COMMANDS

SUBJECT: Project Management Guidance Letter No. 10, Credits for Work-in-Kind  
Performed by Non-Federal Sponsors

1. References:

- a. CECW-P letter, dated 22 July 1987, subject: Work-in-Kind in Lieu of Cash.
- b. ER 1165-2-29, dated 18 November 1987, subject: General Credit for Flood Control.
- c. ER 1165-2-120, dated 15 June 1988, subject: Reimbursement for Advance Non-Federal Construction of Authorized Federal Harbor and Inland Harbor Improvements.
- d. ER 1165-2-18, dated 1 February 1989, subject: Reimbursement for Non-Federal Participation in Civil Works Projects.
- e. ER 1165-2-131, dated 15 April 1989, subject: Local Cooperation Agreements for New Start Construction Projects.
- f. CECW-LN Memorandum dated 8 March 1990, subject: Project Management Guidance Letter No. 4, Credit for Local Sponsor Cost Associated with Project Activities.
- g. ER 11-1-26, dated 31 March 1990, subject: Contract Audit.
- h. ER 1165-2-124, dated 1 October 1990, subject: Construction of Harbor and Inland Harbor Projects by Non-Federal Interests.

2. Construction may not be performed by non-Federal sponsors on Civil Works projects except pursuant to Section 215 of the 1968 Flood Control Act, as amended; Section 104 of the Water Resources Development Act of 1986, as amended (for flood control); Section 204 of the Water Resources Development Act of 1986, as amended (for harbor projects); Section 4 of the Flood Control Act of 1944, as amended (for recreation facilities); Public Law 84-826, as amended (for beach erosion control projects); or other limited or project-specific authority. This prohibition applies not only to construction items but also to preconstruction engineering and design; engineering and design during construction; and construction management. The approval authority for performance of work-in-kind by non-Federal sponsors is the Assistant Secretary of the Army (Civil Works).

3. Audit requirements of the referenced regulations must be followed. Any credit afforded a non-Federal sponsor for approved work-in-kind is limited to the lesser of the following: (1) actual costs that are auditable, allowable, and allocable to the project; or

(2) the Government's estimate of the cost of the work allocable to the project had the Government performed the work; or (3) in the case of certain Section 104 credits, the estimated reduction in the cost of the remaining project construction.

4. In affording credit to non-Federal sponsors for work-in-kind, price levels shall not be adjusted. This requirement applies whether the work-in-kind is performed prior to, or after, the award of the initial Government construction contract. Not only shall actual costs not be adjusted for price levels, but also any estimated cost or cost reduction that is the basis for a credit shall be computed using the same price levels as those in effect at the time the non-Federal work-in-kind is performed. Furthermore, any credit approved by the Assistant Secretary of the Army (Civil Works) for Section 104 work performed prior to 17 November 1986 shall not subsequently be adjusted for price levels.

5. This guidance does not apply to the valuation of lands, easements, rights of way, relocations, and dredged material disposal areas, which is addressed in Reference 1.e.

FOR THE DIRECTOR OF CIVIL WORKS:

/s/

BORY STEINBERG  
Chief, Project Management Division  
Directorate of Civil Works